

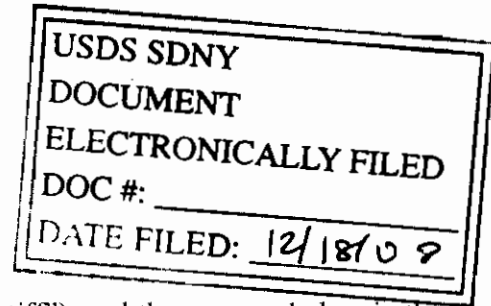
December 17, 2008

Via E-mail Pursuant to Court Instruction

Hon. Richard J. Sullivan
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: **Chin v. RCN Corporation**
Case No. 08-CV-07349 (RJS)

Dear Judge Sullivan:



My firm represents the plaintiff, Sabrina Chin ("Plaintiff"), and the proposed class in the above-referenced action. We respectfully submit this letter on behalf of Plaintiff and defendant RCN Corporation ("RCN") (collectively, the "Parties") in response to this Court's October 21, 2008 Case Management Order (Dkt. 8) ("Order") directing the Parties to submit a letter of five (5) pages or less addressing the following topics.

1. Brief Statement of the Nature of the Action and the Principal Defenses Thereto

RCN is a Virginia-based company that provides Internet service in New York and other areas in the United States. Plaintiff, a New York resident, is a subscriber to RCN's Internet service.

This is a putative class action brought by Plaintiff, on behalf of herself and all other similarly situated customers, against RCN in connection with RCN's alleged network management practice of intentionally interfering with its subscribers' connections to the Internet by delaying and/or blocking altogether certain communications.

Plaintiff's complaint (the "Complaint") alleges that RCN's practices violate the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 and Virginia's Consumer Protection Act, Va. Code § 59.1, *et seq.*, and give rise to common law claims for fraud, breach of contract, breach of the implied covenant of good faith and fair dealing and unjust enrichment. Plaintiff seeks declaratory and injunctive relief in connection with these claims.

On November 21, 2008, RCN filed an answer to the Complaint (Dkt. 9) in which RCN denied all material allegations in the Complaint and asserted various affirmative defenses.

2. Description of All Outstanding Motions

There are no outstanding motions at this time.

3. List of Existing Deadlines and Any Upcoming Conferences

There are no existing deadlines. The initial case management conference is scheduled to occur on January 8, 2009 at 4:30 p.m.

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4. Description of Any Discovery Remaining; Specification Regarding Discovery Necessary to Engage in Meaningful Settlement Negotiations

On December 10, 2008, the Parties met and conferred pursuant to Fed. R. Civ. P. 26(f), and agreed to exchange Fed. R. Civ. P. 26(a)(1) initial disclosures by January 5, 2009. On December 17, 2008, Plaintiff served RCN with discovery demands. RCN intends to serve its own discovery demands in advance of the initial case management conference to be held on January 8, 2009.

The Parties have engaged in serious settlement negotiations and are in the process of evaluating a proposed settlement. In connection with the settlement negotiations, Plaintiff anticipates reviewing certain discovery from Defendant. The topics addressed by this discovery potentially include, but are not limited to, RCN's Internet network management practices; ping and packet loss rates on RCN's Internet network; RCN's advertising, public disclosures, user agreements, and terms of service; RCN subscriber complaints arising from or in connection with RCN's Internet network management practices, including but not limited to RCN Internet subscribers' use of P2P applications to download and upload computer files; and the RCN Music service. This discovery may be produced in forms which potentially include, but are not limited to, documents, written responses and interviews with Defendant's employees.

5. List of All Prior Settlement Discussions

September 3, 2008:	Peter Neger (on behalf of RCN) raised the possibility of settlement in a brief telephone discussion with Michael Reese (on behalf of Plaintiff)
September 24, 2008	Settlement meeting among Michael Reese and Kim Richman (on behalf of Plaintiff), and Peter Neger and Derek Care (on behalf of RCN) for approximately 1.5 hours
October 13, 2008:	Teleconference regarding settlement among Messrs. Reese, Neger and Care for 0.5 hours
October 28, 2008:	E-mail correspondence among counsel regarding settlement
November 11, 2008	E-mail correspondence among counsel regarding settlement
December 5, 2008:	Letter from Mr. Neger to Mr. Reese proposing settlement terms
December 10, 2008:	Settlement meeting among Messrs. Neger, Care, Reese and Richman for approximately 1.5 hours

6. Estimated Length of Trial

The Parties estimate the length of trial to be two weeks (ten business days).

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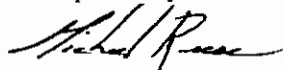
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7. Any Other Information That Would be Helpful to Assist the Court In Resolving This Action

This Court's Order directed the Parties to complete the Court's form Case Management Order and to submit that form together with this letter. The Parties respectfully request that the Court defer completion and submission of the form Case Management Order until the Parties have the opportunity to conference this case with the Court at the initial case management conference scheduled for January 8, 2009. First, as noted, the Parties have commenced discovery; the Parties will have exchanged discovery requests and will have provided each other with the Rule 26(a)(1) initial disclosures prior to our conference with the Court. Second, the Parties have traveled far along the path towards settlement, thereby narrowing the issues; consequently the Parties do not think it prudent to unnecessarily expend significant resources on and attention to broad discovery at this time. Finally, the Parties note that the Court's standard form does not contemplate the special discovery issues often found in complex class actions such as this case (*e.g.*, possible bifurcated discovery) and the Parties would be grateful for the Court's guidance in tailoring a case management order which addresses these issues. Of course, should the Court nevertheless wish us to complete the existing form prior to the January 8, 2009 conference, we will be pleased to do so.

Respectfully submitted,



Michael R. Reese


cc: Peter C. Neger, Esq. (counsel for Defendant RCN Corp.)
Derek Care, Esq. (counsel for Defendant RCN Corp.)
Kim E. Richman, Esq. (counsel for Plaintiff Sabrina Chin)

Request granted. The parties need not submit a joint proposed case management plan prior to the Jan. 8, 2009 Conference in this matter.

SO ORDERED

Date:

12/17/08


RICHARD J. SULLIVAN
U.S.D.J.